

REMARKS/ARGUMENTS

In response to the non statutory double patenting rejection, Applicants respectfully submit that filing a Terminal Disclaimer at this time would be premature in view of the fact that there are other substantive rejections of many of the of these claims. Applicant's respectfully submit that upon resolution of the rejections of claims 1, 11, 12, 15, 17, 27, 37, 38, 41, 43, 52,62, 63, 66 and 68, Applicant may at that time file the requisite Terminal Disclaimer, if it is deemed necessary after the status of the claims in co pending Application No. 10/236,714 have been assessed.

Claims 16, 25, 42, 43, 67 and 68 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully submits that claims 16, 25, 42, 43, 67 and 68 have been amended to overcome the respective lack of antecedent basis in each claim. Applicants' respectfully submit that claims 16, 25, 42, 43, 67 and 68 are now in condition for allowance and request that the claims be reexamined in view of the amendments.

Claims 1, 15-17, 23, 27,41, 49, 52, 66-68 and 74 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,496,361 issued to Moberg et al. In the Office Action communication the Examiner indicates that regarding claim 2 and claims with similar limitations, there does not appear to be a teaching in the prior art of record a the step for determining, based on the detected difference in synchronization of a first ventricular wall location contraction and a second ventricular wall location contraction, a parameter for a stimulation pulse. The Examiner further states, "Moberg et al. disclosed that the detected difference may be useful and be filtering out body motion artifact but does not discuss changing a pulse parameter based on this difference."

Applicants' respectfully request reconsideration of claim 1 as amended. Claim 1 has been amended to include the core limitations of claim 2, which the Examiner has indicated is allowable subject matter. Specifically claim 1 has been amended to include a step of determining, based on the detected difference in synchronization of the first ventricular wall contraction and the second ventricular wall contraction, at least one parameter for a

stimulation pulse to be applied by an electrode. Applicants' respectfully submit that this additional step distinguishes claim 1 over Moberg et al. because as the Examiner has already admitted, Moberg et al. does not disclose changing a pulse parameter based on the detected difference in synchronization of a first ventricular wall location contraction and a the second ventricular wall contraction. Applicants' respectfully submit that the amendment does not add new matter as the amendment is simply adding the allowable subject matter from claim 2. Therefore claim 1 as amended is believed to be patentably distinguishable from U.S. Patent No. 5,496,361 and therefore is allowable. Applicants respectfully submit that claim 1 has been placed in condition for allowance.

Further, claims 15-17 and 23 are also in condition for allowance by virtue on their dependency on independent claim 1. Accordingly Applicants' respectfully request reconsideration and withdrawal of the rejection of claims 1, 15-17 and 23 under 35 U.S. C. §102.

Reconsideration of claim 27 as amended is also respectfully requested. The Examiner rejected claim 27 under 35 U.S. C. §102 as being unpatentable over Moberg et al. Claim 27 has been amended to include the core elements of claim 28 which the Examiner has already indicated includes allowable subject matter. Specifically claim 27 now includes an output module and additional claim language regarding the processing module which "is further configured to determine based on the detected difference a parameter for a stimulation pulse." In addition, claim 27 adds further limitations to the output module which is configured to apply the stimulation pulse to an electrode. Applicant respectfully submits that the amendment to claim 27 does not include new matter because the amended claim language in claim 27 is pulled directly from claim 28, which has been identified as including allowable subject matter. In view of the above arguments regarding amended claim 1 and the Examiner's indication that the subject matter disclosed in claim 28, which is dependent on claim 27, is allowable subject matter, Applicants' respectfully submit that claim 27 as amended is believed to be patentably distinguishable from Moberg et al.

Further claims 41 and 49 are also in condition for allowance by virtue of their dependency on independent claim 27. Accordingly, Applicants' respectfully request

reconsideration and withdrawal of the rejection of claims 27, 41 and 49 under 35 U.S. C. §102.

Reconsideration of claim 52 as amended is also respectfully requested. The Examiner rejected claim 52 under 35 U.S.C. §102 unpatentable over Moberg et al. Claim 52 has been amended to include a stimulation means and further claim language regarding the processing means, "wherein the processing means is also for determining, based on the detected difference, a parameter for a stimulation pulse." The claims also disclose that the stimulation means is for applying the stimulation pulse to an electrode. The amended claim language in claim 52 is directly from claim 53, which has already been identified by the Examiner as including allowable subject matter. Because the amendment to claim 52 is derived directly from claim 53, the amendment does not include new matter. Therefore claim 52 as amended is believed to be patentably distinguishable from Moberg et al. and therefore is allowable. Applicants' respectfully submit that claim 52 has been placed in condition for allowance.

Further claims 66-68 and 74 are also in condition for allowance by virtue of their dependency on independent 52. Accordingly, Applicants' respectfully request reconsideration and withdrawal of the rejection of claims 52, 66-68 and 74 under 35 U.S.C. §103.

The Examiner rejected claims 11, 12, 37, 38, 62 and 63, under 35 U.S.C. §103 as being unpatentable over Moberg et al. Applicants' respectfully submit that in view of the above arguments claims 11 and 12 are in condition for allowance by virtue of their dependency on independent claim 1, claims 37 and 38 are in condition for allowance by virtue of their dependency on independent claim 27 and claims 62 and 63 are in condition for allowance by virtue of their dependency on independent claim 52. Accordingly, Applicants' respectfully request reconsideration and withdrawal of the rejection of claims 11, 12, 37, 38, 62 and 63 under 35 U.S.C. §103.

In view of the above amendments and remarks, and dependent on the status of the claims in Application No. 10/236,714, it is submitted that, to the extent it is necessary, upon submission of a Terminal Disclaimer, claims 1-76 are in condition for allowance, and notification of that effect is earnestly solicited.

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CONCLUSION

Should the Examiner have any questions or comments, please contact the undersigned
at 404-954-5100.

Respectfully submitted,

MERCHANT & GOULD, LLC

A handwritten signature in black ink, appearing to read 'Alan G. Gorman', with a long horizontal line extending to the right.

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